COUNCIL OF
THE EUROPEAN UNION

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GUIDELINES TO PROMOTE AND PROTECT THE ENJOYMENT OF ALL HUMAN RIGHTS BY LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PERSONS

FOREIGN AFFAIRS Council meeting
Luxembourg, 24 June 2013

The Council adopted the following guidelines:

"I. Introduction

A. Reason for Action

1. The rights of LGBTI persons are protected under existing international human rights law, although specific action is often required in order to ensure the full enjoyment of human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. LGBTI persons have the same rights as all other individuals — no new human rights are created for them and none should be denied to them. The EU is committed to the principle of the universality of human rights and reaffirms that cultural, traditional or religious values cannot be invoked to justify any form of discrimination, including discrimination against LGBTI persons[1].

2. The EU is gravely concerned that sexual orientation and gender identity continue to be used to justify serious human rights violations around the world. LGBTI persons constitute a vulnerable group, who continue to be victims of persecution, discrimination, bullying and gross ill-treatment, often involving extreme forms of violence, including torture and murder. Discrimination against LGBTI persons is often rooted in societal norms and perceived roles that perpetuate gender inequalities. The EU is particularly concerned that in some countries, sexual relations between consenting adults of the same sex are criminalised and are liable to be punished with imprisonment or with the death penalty. In other countries governments actively seek to limit freedom of assembly, association and expression of LGBTI persons.

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[1] See also paragraph 5 of the Vienna Declaration and Programme of Action, adopted at the 1993 World Conference on Human Rights (UN doc A/CONF.157/23): "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

3. Legislative frameworks protecting LGBTI persons from discrimination and hate crimes are absent in many countries, and discrimination on the basis of real or perceived sexual orientation or gender identity occurs around the world when LGBTI persons try to access jobs, health care or education. Consequently discrimination may also lead to increased poverty among LGBTI persons.

4. Persons working to advance the human rights of LGBTI persons are human rights defenders and they should be considered when monitoring the situation of human rights defenders in third countries. There is a need, however, to be mindful of the particular sensitivities of LGBTI issues among interlocutors on the one hand and the specific vulnerabilities of LGBTI persons on the other. A consistent but persuasive approach, rather than a public and conflictual approach may be more likely to have a positive effect. Tailor made approaches and human rights country strategies will be an important tool to identify the best way forward in different contexts with this regard.

B. Purpose and scope

5. The EU aims to promote and protect all human rights of LGBTI persons on the basis of existing international legal standards in this area, including those set by the United Nations and the Council of Europe. Through the different tools available within its external action, including financial instruments available from both EU institutions and Member States, the EU will seek to actively promote and protect the enjoyment of these rights.

6. These guidelines aim to provide officials of EU institutions and EU Member States, with guidance to be used in contacts with third countries and with international and civil society organisations, using a case-by-case approach, in order to promote and protect the human rights of LGBTI persons within its external action. They seek to enable the EU to proactively promote the human rights of LGBTI persons, to better understand and combat any structural discrimination they might face, and to react to violations of their human rights. In doing so, they will further contribute to reinforcing and supporting the EU's human rights policy in general.

7. This document builds on the Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT people (2010). The Guidelines on the death penalty; on torture and other cruel, inhuman or degrading treatment or punishment; on human rights defenders; on the promotion and protection of the rights of the child and on violence against women and girls and combating all forms of discrimination against them are particularly relevant.

8. The EU is keenly aware that the promotion of human rights on grounds of sexual orientation and gender identity in many areas around the world, including within the EU, can lead to sensitive discussions. However, building on international standards and its own legislative framework, the EU is committed to advancing the human rights of LGBTI persons in a meaningful and respectful way. It will do so by taking into account the local realities in which human rights defenders need to advance their struggle.

C. Definitions and Legal Framework

9. LGBTI persons have the same human rights as all individuals, including the right to non-discrimination. This principle is enshrined in numerous international instruments, having a wide scope in its application. Specifically, at global level, it is embodied in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR)[2], [3] and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[4] (see **Annex 1**). This interpretation has been supported by various UN Treaty Bodies and Special Rapporteurs.

10. The EU unanimously supported the December 2008 United Nations General Assembly (UNGA) Statement on human rights, sexual orientation and gender identity,[5] supported by 68 countries from five continents. The Statement reaffirms the principle of non-discrimination and condemns executions, arbitrary arrest or violations of human rights on the basis of sexual orientation or gender identity. The EU also supported joint statements at the Human Rights Council in 2006 and 2011, which were made on behalf of 54 and 85 states respectively. In 2011, the UN Human Rights Council adopted a resolution on human rights, sexual orientation and gender identity, which was unanimously supported by the EU and which tasked OHCHR to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. The report also gives a concise overview of the applicable international standards and obligations.[6]

11. In 2010, EU member states of the Council of Europe supported a Recommendation of the Committee of Ministers on LGBTI rights which included a comprehensive set of measures to promote the human rights of LGBTI persons in Council of Europe member states.[7]

12. The Office of High Commissioner for Human Rights[8], UN Special Procedures[9], UN Human Rights Treaty Bodies[10] and the Council of Europe Commissioner for human rights[11] make reference in their work to the Yogyakarta Principles on the application of international human rights

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2 ICCPR, Article 2 (1): ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status").

3 ICCPR, Article 26 ("All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status").

4 ICESCR, Article 2 (2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status").

5 Full text available at http://www.droitsLGBTI2008.fr/documents/?mode=download&id=2.

6 http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf

7 Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on Measures to combat discrimination on grounds of sexual orientation or gender identity, adopted without vote on 31 March 2010.

8 See e.g. Report of the UN High Commissioner on Human Rights "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity", UN Doc. A/HRC/19/41 of 17 November 2011

9 See e.g. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/22/53 of 1 February 2013

10 See e.g. Committee on Economic, Social and Cultural Rights, General Comment No.20 on Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), UN Doc. E/C.12/GC/20 of 10 June 2009.

11 See e.g. CoE Commissioner for Human rights, Thomas Hammarberg, "Time to recognize that human rights principles apply also to sexual orientation and gender identity", 14 May 2008, in: http://www.coe.int/t/commissioner/Viewpoints/080514_en.asp

law in relation to sexual orientation and gender identity, a non-binding interpretive text elaborated by a gathering of independent experts in 2006.

13. EU laws and policies provide for equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU). The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender ReCast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

Working definitions [12]

The acronym **LGBTI** describes a diverse group of persons who do not conform to conventional or traditional notions of male and female gender roles. LGBTI people are also sometimes referred to as "sexual, gender and bodily minorities".

A **lesbian** is a woman whose enduring physical, romantic and/or emotional attraction is to other women. **Gay** is often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although the term can be used to describe both gay men and lesbians. **Bisexual** describes an individual who is physically, romantically and/or emotionally attracted to both men and women. **Transgender** describes people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term **intersex** covers bodily variations in regard to culturally established standards of maleness and femaleness, including variations at the level of chromosomes, gonads and genitals.

Sexual orientation refers to each person's capacity for emotional, affective and sexual attraction to, and intimate and sexual relations with, individuals of a different or the same gender or more than one gender.

Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.

II. Operational Guidelines

A. Priority Areas of Action

14. In order to effectively promote and protect the human rights of LGBTI persons through EU external action, the EU should focus on the following areas:

12 **See UNHCR Guidance on "Working with LGBTI persons in forced displacement', 2011, p.3 : http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4e6073972**. These definitions are not legally binding and have not been formally adopted by an intergovernmental body; they are included to provide practical guidance to officials of EU institutions and EU Member States working on LGBTI issues. **See also UNHCR Guidelines on International Protection No.9: "Claims to refugee status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees", HCR/GIP/12/09 of 23 October 2012, p.4**

1. Decriminalisation and Combatting discriminatory laws and policies

15. Today, around 80 states still criminalise consenting same-sex adult relations, including a number of states that may impose the death penalty. Such criminalisation is contrary to international human rights law and is in violation of the human rights of LGBTI persons, including the right to life, privacy, liberty, security and to health, as well as freedom of association, assembly and expression. These fundamental freedoms are also curtailed by legislative initiatives that criminalise public discussion and/or expression of homosexuality, including the prohibition of "pride marches". The criminalisation of consenting same-sex adult relationships reinforces existing prejudices, increases stigmatisation, legitimises discrimination and can make LGBTI persons more vulnerable to human rights abuses and violence, including police brutality and instances of torture and other forms of cruel, inhuman and degrading treatment against LGBTI persons.

16. Legal measures, such as anti-prostitution laws, nuisance laws, and prohibition of so-called 'cross-dressing', may also target gender variant and transgender persons, and be used by law enforcement personnel to prosecute transgender persons on the basis of their gender identity or gender expression. Transgender persons whose identity documentation does not reflect their preferred gender may be hampered in seeking access to justice, where their rights have been violated.

17. The EU:
a. Should actively condemn discriminatory laws, policies and practices, including the criminalisation of consenting same-sex relations between adults or transgender identities, in particular the use of the death penalty, torture or ill-treatment in this respect.
b. Should also actively oppose other limitations on access to human rights, in particular legislative initiatives limiting the rights to freedom of expression, association and assembly.
c. Should work to achieve the decriminalisation of consenting same-sex and transgender adult relations and the abolition of discriminatory practices against all persons, including LGBTI persons.

18. The actions of the EU in this area should be guided by the following:

- Giving careful consideration, on a case by case basis, to the best way of promoting effectively the human rights of LGBTI persons and the elimination of discriminatory laws, policies and practices.
- Focussing its work on those countries where consenting same-sex relations between adults, transgender identities or their defence are criminalised or where there are moves to change existing legislation (in either direction), raising the issue and encouraging states to make legislative changes compliant with international law.

- Putting particular emphasis on situations where the death penalty is in force, and/or torture and ill-treatment take place against LGBTI persons, and condemning these practices in accordance with the EU Guidelines on the death penalty and the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment.
- Consult and take into account the views of the LGBTI community in the countries concerned about the most appropriate ways to act and react.

2. Promoting equality and non-discrimination

19. Discrimination on the grounds of sexual orientation or gender identity is the most common issue facing LGBTI persons. Discriminatory legislation, policies and practices can be found in the workplace and in the public sphere, specifically regarding access to health care and education. It can include issues of bullying and other forms of exclusion. Discrimination and inequality of treatment are also very likely to be found in detention facilities.

20. Appropriate identity documents are a pre-requisite to effective enjoyment of many human rights. Transgender persons who do not have identity documentation in their preferred gender may as a result be exposed to arbitrary treatment and discrimination at the hands of individuals and institutions. No provision is made in some countries for legal recognition of preferred gender. In other countries, the requirements for legal gender recognition may be excessive, such as requiring proof of sterility or infertility, gender reassignment surgery, hormonal treatment, a mental health diagnosis and/or having lived in the preferred gender for a specified time period (the so-called 'real-life experience').

21. Such excessive provisions or practices are contrary to the right to equality and non-discrimination as stated in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

22. The EU should denounce any form of discrimination that is contrary to these fundamental principles.

23. The actions of the EU in this area should be guided by the following:

- Encouraging states to promote equality and non-discrimination in the enjoyment of all human rights by LGBTI persons, including by introducing national legislation and policies, including awareness raising, that promote equality and non-discrimination in the work place, health sector and in education.
- Identifying situations where political and financial support for governmental and non-governmental initiatives to promote non-discrimination and equality would provide added value to this work.

3. Combating LGBTI-phobic violence

24. The EU is particularly concerned about cases of LGBTI-phobic violence, which undermines the most basic human rights principles. Such violence comprises a wide spectrum of violent acts including murder, rape, beatings, torture, cruel, inhuman or degrading treatment or punishment, and physical attacks in public space. While acts of violence are increasingly addressed by human rights organisations, they remain underreported. In some countries, a climate of impunity allows for acts of violence against LGBTI persons to go unpunished, without investigation. Countries that continue to criminalise consenting same-sex and transgender adult relations, or that lack legislation explicitly protecting LGBTI persons from discrimination and violence, have notably higher rates of LGBTI-phobic violence.

25. Transphobic violence and killings are particularly prevalent, given the relatively small proportion of transgender persons, the low levels of monitoring and reporting of such crimes as well as fear of reprisals.

26. Lesbian, bisexual and transgender women are particularly vulnerable targets of bias-motivated killings and rape, due to gender inequality and gender norms within family structures. The practice of ‘corrective rape’ and ‘honour killings’, often taking place in private settings and carried out by family members, has been reported by UN special procedure mandate holders and human rights organisations in many countries.

27. It is the EU’s objective to contribute to combating any form of LGBTI-phobic violence.

28. The actions of the EU in this area should be guided by the following:

- Encouraging states to acknowledge LGBTI-phobic violence and develop in conjunction with civil society legal and other measures to prevent, monitor and effectively prosecute perpetrators of LGBTI-phobic violence.
- Contribute to combating any form of LGBTI-phobic violence by supporting civil society and governmental initiatives to: monitor cases of violence, to educate law enforcement personnel and to seek assistance and redress for victims of such violence.

4. Support and protection for human rights defenders

29. All states should respect the work of human rights defenders as stated in the International Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (adopted in 1998 by the UNGA). Nonetheless, human rights defenders (journalists, activists, lawyers, trade unionists etc.) working to promote and protect the human rights of LGBTI persons, are an extremely vulnerable group, and frequently become targets for persecution and human rights violations. This is especially the case in countries where governments ban public discussion on sexual orientation and restrict freedom of association and expression on these issues.

30. In order to be consistent with the progress made in implementing the EU Guidelines on human rights defenders, the actions of the EU in this area should be guided by the following:

- Encouraging third countries to adopt a culture of general respect towards and recognition of the work carried out by defenders of human rights, including those of LGBTI persons.
- Prioritising the EU's work in countries where there is a poor record of respect of human rights defenders in general and defenders of the human rights of LGBTI persons in particular, especially where legislative changes and criminal sanctions have had a negative impact on the work of human rights defenders.
- Reacting to apparent violations of the rights of human rights defenders in third countries, highlighting the EU position in relation to this issue and carrying out its work in accordance with the EU Guidelines on human rights defenders.

B. Operational Tools

31. Officials of EU institutions and EU Member States whenever relevant have various tools and actions at their disposal, also using existing instruments and guidelines:

Regarding third countries

1. Human rights country strategies:

- Address the situation of LGBTI persons in the human rights country strategies, noting in particular the occurrence of human rights violations and structural discrimination against LGBTI persons. A differentiated approach to these issues and priority focus may be required in different countries and regions.

2. Monitoring human rights of LGBTI persons:

- Use the analysis/checklist in **Annex 2** to track and monitor the situation of the human rights of LGBTI persons in the country concerned to identify progress/setbacks.
- Keep actively in contact with local authorities, regional organisations and local and international civil society organisations in order to obtain information, including on individual violations of the human rights of LGBTI persons.

3. EU Heads of Mission (HoMs) reports:

- Include in the periodic reports an analysis of the situation of LGBTI persons as well as violations of the human rights of LGBTI persons and human rights defenders.
- Identify and monitor individual cases of apparent violations of the human rights of LGBTI persons.
- Detail measures (e.g. démarches, raising the issue in political dialogue, financing) that have been taken or planned to combat alleged or proven violations (any action on an individual case should only be pursued if the person concerned gives his or her consent).
- Use the UPR reporting cycle and follow up on the recommendations made to the state under review.

4. Démarches and public statements:

- Propose and make démarches and public statements on LGBTI issues with a particular focus on high-risk cases and situations.
- Respond to positive developments in promoting and protecting the full enjoyment of human rights by LGBTI persons in third countries.
- Publicly support, including, as appropriate, participation in, the exercise of freedom of assembly and expression (e.g., public events, "pride marches").

5. Individual cases:

- Propose specific action, e.g. démarches, when made aware of well-documented individual cases of proven violations of the human rights of LGBTI persons (actions on individual cases should be determined on a case-by-case basis and should only be pursued if the person concerned gives his or her informed consent and may form part of a general démarche or statement).

6. Court hearings and prison visits:

- Attend and observe court hearings during legal procedures concerning violations of the human rights of LGBTI persons, paying special attention to high-risk cases.
- Contact a state prosecutor, police authorities or an established and independent visiting body to ask for permission to visit places of detention in order, for example, to assess the situation of LGBTI persons in detention.

7. Political dialogues:

- Raise the human rights situation of LGBTI persons in the human rights component of political dialogues and specialised dialogues (human rights dialogues, consultations, subcommittees, and Article 8 Cotonou dialogues) with third countries and regional organisations.
- Raise individual cases, with the consent of those involved, of human rights violations against LGBTI persons.
- Encourage third countries to initiate legislative changes to ensure equality before the law for LGBTI persons.
- Encourage third countries to sign and/or ratify relevant international instruments, particularly the ICCPR and the ICESCR, and to lift any relevant reservations to these instruments.
- Encourage third countries to establish independent bodies in charge of monitoring places of deprivation of liberty, including by ratification of the Optional Protocol to the Convention against Torture (OPCAT).
- Use the UPR reporting cycle and follow up on the recommendations made to the state under review.
- Encourage third countries to invite UN Human Rights Special Procedures to conduct country and thematic missions, to accept their recommendations and to implement them.

- Support those third countries that are in favour of promoting and protecting the human rights of LGBTI persons, encourage closer cooperation in multilateral fora and promote their efforts as examples on a regional level.
- Encourage an exchange of information on good practices with third countries that are in favour of promoting and protecting the human rights of LGBTI persons in order to improve and contribute to EU measures (to be included in the compendium of good practices and lessons learnt).

8. Supporting efforts by civil society:

- Provide messages of political support when deemed useful and upon consultation with civil society.
- Facilitate information on the available funding (e.g. through the EIDHR or relevant instruments of the EU Member States).
- Provide information on laws and practices regarding LGBTI persons in the EU.
- As appropriate, promote the visibility of local organisations promoting the human rights of LGBTI persons e.g. by hosting debates and seminars on relevant issues and including LGBTI aspects and speakers and by endorsing cultural events, conferences, or social projects.
- Encourage a debate on LGBTI issues between state actors and civil society by providing opportunities for exchange.
- Consult civil society organisations on how to mainstream LGBTI issues.
- Encourage civil society organisations to promote the human rights of LGBTI persons.
- Encourage civil society organisations to properly document human rights violations affecting LGBTI persons.
- Support relevant academic research to assist in the development of domestic debate and advocacy efforts.

9. International mechanisms:

- Suggest that visiting UN Special Rapporteurs, EU Special Representatives and equivalent figures from the Council of Europe, the OSCE and other regional human rights bodies meet local NGOs that work to promote and protect the human rights of LGBTI persons.
- Suggest that international monitoring bodies have a special focus on LGBTI persons during their visits to places of deprivation of liberty.
- Encourage local groups to include information on the situation of LGBTI persons in their alternative reports to regional human rights mechanisms and to UN bodies.
- Include such information in the material for use in the Universal Periodic Review mechanism at the UN Human Rights Council.

10. Visiting EU and Member State missions:

- Include information on the situation of LGBTI persons in briefing materials for visiting EU and Member State missions and encourage them to raise the issue with local counterparts and to meet human rights defenders working to promote and protect the human rights of LGBTI persons.

32. Throughout these actions, special attention should be paid to: high-risk cases, including criminal sentences, the death penalty, torture or other ill-treatment; cases of alleged and proven violations against defenders of human rights of LGBTI persons; and good practices to achieve policy and legal change and to remove structural constraints, including discriminatory legislation and practices, as well as impunity for violations of the human rights of LGBTI persons.

In multilateral fora:

1. United Nations

- Express the need for all countries to adhere to and comply with the Universal Declaration of Human Rights (1948), where the principle of the universality of human rights is enshrined in Article 1, which proclaims that 'all human beings are born free and equal in dignity and rights'.
- Incorporate LGBTI concerns in statements and questions during interactive dialogues at the UN, reflecting the fact that the EU is deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity in general, and condemning specific violations such as the use of the death penalty on such grounds, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention, as well as the rights to freedom of expression, freedom of association and assembly, and deprivation of economic, social and cultural rights in particular.
- Encourage states to take all necessary steps, in particular legislative or administrative measures, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests, detention or fines, to ensure that human rights violations against LGBTI persons are investigated and perpetrators held accountable and brought to justice, and also to ensure adequate protection of human rights defenders and remove obstacles that prevent them from carrying out their work.
- Ensure appropriate and sustained follow-up to Human Rights Council (HRC) resolution 17/19, which is presently the only LGBTI-specific resolution to have been adopted which set in motion the first ever formal inter-governmental process on sexual orientation and gender identity, culminating in the March 2012 panel at the HRC. The High Commissioner Report[13] and panel

[13] A/HRC/19/41

confirmed the prevalence and gravity of violence and discrimination against LGBTI persons and exposed the inadequacy of the response at both national and international levels.

- When appropriate, commend the attention paid to these issues by the special procedures of the Human Rights Council and Treaty bodies and encourage them to continue to integrate consideration of human rights violations based on sexual orientation or gender identity into their relevant mandates.
- Include LGBTI questions and recommendations in interventions during the UPR process, where relevant, at the Human Rights Council (HRC) in Geneva.

2. OSCE

- When appropriate, incorporate LGBTI concerns in national statements and in questions during interactive dialogues within the OSCE.
- Continue to work actively to include 'sexual orientation and gender identity' as explicitly recognised discrimination grounds in OSCE Commitments or Ministerial Council Decisions.
- In accordance with the commitment of OSCE participating states to exchange information on the abolition of the death penalty and to make it available to the public (Copenhagen Document), incorporate in the EU Member States' national statements within the OSCE's Human Dimension framework information on the abolition of the death penalty with regard to LGBTI persons (measure contained in the EU Guidelines on the Death Penalty).

3. Council of Europe (CoE)

- When appropriate, incorporate LGBTI concerns in national statements and in questions during interactive dialogues at the CoE.
- Welcome the positive outcome of Council of Europe initiatives in this domain and the examination of the implementation of Recommendation CM/Rec (2010) 5.
- Refer where appropriate to the human rights of LGBTI persons when the CoE develops human rights protection, such as the Convention on preventing and combating violence against women and domestic violence.
- Take into account that the European Commission against Racism and Intolerance (ECRI) has expressed its intention to include the examination of LGBTI related issues in their new 2013 monitoring cycle.
- Take into consideration where relevant the work of the Commissioner for Human Rights, who has prioritised discrimination based on sexual orientation and gender identity as one of the thematic areas for his Office.
- Take into consideration where relevant the European Committee for the Prevention of Torture (CPT), recommendations regarding the treatment of LGBTI persons deprived of their liberty.

4. Other mechanisms

- Encourage other relevant international organisations to take appropriate steps to encourage states to ratify and comply with the relevant international norms and standards relating to the human rights of LGBTI persons.
- Incorporate, when appropriate, LGBTI human rights concerns in statements and questions during interactive dialogues within international mechanisms.
- Encourage third countries to invite human rights special procedures from different international organisations to conduct country and thematic missions, and to accept and implement their recommendations.

- Where possible, make efforts to collaborate on a cross-regional basis in organising side-events on promoting and protecting the human rights of LGBTI persons, in particular to discuss good practices on LGBTI issues, paying attention to the recommendations adopted by all different international organisations and encouraging states to take them into consideration to improve the local human rights situation of LGBTI persons.
- Identify possible like-minded states to advance LGBTI equality in the enjoyment of human rights, encourage closer cooperation in multilateral fora and promote their efforts as examples on a regional level.
- Encourage the Office of the UN High Commissioner for Human Rights (UNOHCHR), other UN entities, Council of Europe (CoE) and OSCE local offices to address LGBTI human rights issues in their work.
- Include civil society members in side-events that take place in multilateral fora to promote LGBTI human rights issues.

III. General measures

33. The Council Working Group on Human Rights (COHOM) will review the implementation of these Guidelines three years after their adoption and update these Guidelines, if necessary. COHOM will also promote and oversee further mainstreaming of LGBTI issues within the EU's external action, actively disseminate these Guidelines and promote their implementation by EU Member States, the European External Action Service, EU CSDP missions and Operations and whenever relevant, EU Special Representatives, the European Commission and the European Parliament.

34. COHOM will compile a compendium of good practices and lessons learned on EU action in the promotion and protection of the full enjoyment of human rights by LGBTI persons, in order to promote cross-learning and policy coherence.

35. Information on LGBTI issues will be included in relevant training for the officials of EU institutions and EU Member States, EU CSDP missions, EU Member States diplomats and field staff.

36. Particular attention will be paid to gender aspects, i.e. taking account of the fact that lesbian and bisexual women, trans, intersex and gender-variant persons make up a significant part of the LGBTI group and are particularly vulnerable to gender-based and sexual violence. Also, women's civil society groups and organisations frequently play an important role in promoting and protecting the human rights of LGBTI persons, particularly in countries where LGBTI organisations are not permitted.

ANNEX 1

International and regional legal instruments, declarations, statements and other relevant documents for the promotion and protection of the human rights of LGBTI persons

International legal instruments:

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- Convention of the Rights of the Child (CRC), 1989
  (Art. 2)
- International Labour Organisation (ILO) Convention No 111, 1958

Regional legal instruments:

Europe
- European Convention on Human Rights (ECHR), 1953
- Treaty on the Functioning of the European Union (TFEU), 2010
- Charter of Fundamental Rights of the European Union, 2000

EU secondary legislation: Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, 2004/113/EC, 2006/54/EC, 2004/83/EC, 2011/0129 (Victims' Rights Package), "Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA"

Declarations

- Universal Declaration of Human Rights, 1948
- UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1999

Other regional documents

- Council of Europe standards 'Combating discrimination on grounds of sexual orientation and gender identity', 2011
- Council of Europe 'Recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity', 2010
- OAS resolution 'Human rights, sexual orientation and gender identity', 2008
- OAS resolution on 'Human rights, sexual orientation and gender identity in the countries of the Americas', 2009

Statements and Resolutions

- UN HRC Joint Statement on sexual orientation, gender identity and human rights, December 2006;
- UNGA Statement on human rights, sexual orientation and gender identity, 2008;
- UN HRC Joint Statement 'Ending Acts of Violence and Related Human Rights Violations Based On Sexual Orientation and Gender Identity', March 2011;
- HRC Resolution "Human rights, sexual orientation and gender identity" (HRC/17/L.9/Rev.1);
- Report of the UN High Commissioner for Human Rights — Study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity,[14] 2011.

Other relevant documents

- World Congress on Human Rights, Sexual orientation and Gender identity Report, 2009
- Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, OHCHR, 2012
- UNHCR Guidelines on International Protection NO.9: "Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", 23 October 2012
- The Fundamental Rights Agency 'European LGBT Survey', May 2013
- Council of Europe Committee of Equality and Non-discrimination "Tackling Discrimination on the grounds of sexual orientation and gender identity", Revised Memorandum, 15 March 2013
- The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006

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14 http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.

ANNEX 2

Elements for analysis/checklist of the situation regarding LGBTI human rights issues:

Human rights issue	Indicators	Sources of Information
1. Right to life		
1.1. Is the death penalty being used to penalise consenting same-sex relations?	Does the law provide for the death penalty for consenting same-sex relations? Is the legislation being enforced (investigations by police and/or sentencing by courts)?	Criminal code; newspaper reports; crime statistics; NGOs, blogs and websites.
1.2 Are LGBTI persons being targeted for extra-judicial killings on the basis of their sexual orientation or gender identity?	Are there reliable reports of LGBTI persons being killed or being threatened with killing either by or with the involvement of the police or other security officials? Have such cases been investigated and prosecuted?	Reports of UN Special Rapporteurs or other representatives of international organisations, Testimonies; newspaper reports; NGOs, blogs and websites.
2. Right to freedom from torture or cruel, inhuman or degrading treatment		
2.1 Are LGBTI persons systematically and in a discriminatory manner subjected to torture or abused by police or other security forces?	Are there reliable reports of LGBTI persons being tortured or abused by police or other security forces during investigations or detention? Have such cases been investigated and prosecuted?	Reports of UN Special Rapporteurs or other representatives on international organisations; reports of visiting mechanisms, such as National Preventive Mechanisms (NPMs), the Subcommittee on the Prevention of Torture (SPT), the Council of Europe anti-torture Committee (CPT), and National Human Rights Institutions (NHRIs), testimonies; newspaper reports; NGOs, blogs and websites.

2.2 Do police and other security officials offer adequate protection to LGBTI persons?	Are violent crimes against LGBTI persons investigated and prosecuted?	Reports of visiting mechanisms, such NPMs, the SPT, the CPT and NHRIs, testimonies; newspaper reports; crime statistics; NGOs, blogs and websites.
2.3 Do detaining authorities provide adequate protection to LGTBI persons held in their custody?	When needed, are necessary measures taken to protect LGTBI detainees against abuses committed by co-detainees? Is this done with the informed consent of the persons concerned?	Reports of visiting mechanisms, such NPMs, the SPT, the CPT and NHRIs, testimonies; newspaper reports; crime statistics; NGOs, blogs and websites.
3.1 Do LGBTI persons have equal and effective protection against discrimination before the law?	Does legislation discriminate on the basis of sexual orientation or gender identity? Does anti-discrimination legislation cover sexual orientation and gender identity? Is this legislation being enforced by the legal system (e.g. police and the courts system)?	Testimonies; anti-discrimination legislation; legal codes generally; legal associations; NGOs, blogs and websites.
4. Right to equality and non-discrimination		
4.1 Is criminal law being used to penalise consenting same-sex relations or transgender identities?	Do police arrest persons on suspicion of same-sex relations? Are people tried and punished for such relations? Do police arrest or fine people on the basis of alleged cross-dressing or their transgender identities?	Criminal code; testimonies; newspaper reports; crime statistics; NGOs, blogs and websites.
4.2 Are other laws concerning morality or public order used to outlaw same-sex relations?	Do the authorities raid private parties, or prevent people from advertising for companions on internet sites?	Criminal code; testimonies; newspaper reports; NGOs; LGBTI groups, associations of lawyers.

4.3 Are there differences in the laws for heterosexuality and homosexuality, such as age of consent or specifying in private or public settings? Are these enforced?	Are there investigations and/or prosecutions? Do young people under the age of consent get punished for same-sex acts when they would not be for sexual acts with the opposite sex?	Criminal code; testimonies; newspaper and website reports of court cases; NGOs; LGBTI groups, .
4.4 Are there procedures in place to recognise a transgender or intersex person's gender identity in official documents?	Does the law and/or administrative regulation permit this? Are these procedures accessible, transparent, quick and free from abusive medical and social requirements? Do they ensure privacy is protected by prohibiting disclosure of the person's legal gender history? Do they legally provide for state and non-state actors to change gender on job references, certifications and similar?	Official registration agencies; NGOs, LGBTI groups .
4.5 Can a transgender or intersex person enjoy all of the rights of her/his new reassigned gender?	From a legal perspective, is a transgender or intersex person who has had his/her gender reassigned treated the same way as any other person of the same gender?	Legal associations; relevant authorities.
5. Right to association		
5.1. Can LGBTI persons establish associations to represent their interests?	Does the law forbid such associations? If not, are they effectively outlawed by official harassment? Does membership involve any adverse consequences for the members? Do associations feel obliged to conceal their true vocations by using euphemisms?	Law on NGOs/associations; existence of websites; reports of NGOs, LGBTI groups ; trade unions.

6. Freedom of assembly		
6.1 Can LGBTI associations organise public and non-public events like Gay Pride Marches, cultural and social events, and conferences	Do such events take place without excessive political and administrative obstacles? Do the police protect the events if there is public hostility? Is pressure put on owners not to hire premises for LGBTI events?	Law on assemblies; news reports; NGO reports; websites of local civil liberties/LGBTI groups.
7. Freedom of information and expression		
7.1 Does the law permit journals/websites/radio/TV programmes/films that feature LGBTI subjects? Can these effectively operate?	Are journals available on public sale? Can radio, TV shows and films feature aspects of LGBTI life? Is reporting LGBTI issues intended to be informative or to incite hatred? Is there official pressure on distributors and broadcasters to discourage positive images of LGBTI persons?	Appearance on news-stands around the country; newspaper and website reports; human rights and LGBTI NGO reports; discussions with media groups.
8. Right to work		
8.1. Do people suffer discrimination in the right to work on the grounds of sexual orientation or gender identity?	Is there any legal protection against discrimination on the grounds of sexual orientation or gender identity? Is sexual orientation disclosure an important element/impediment in workplace? Are they lawfully dismissed if their LGBTI status is discovered?	Testimonies; newspaper and website reports; LGBTI groups and blogs; trade unions.

9. Right to health		
9.1 Do LGBTI persons enjoy equality in access to health facilities for issues relevant to them?	Is there access to confidential and adequate health services for LGBTI persons? Are health care providers trained to provide unbiased health care to LGBTI persons? Is there adequate information on HIV/AIDS/STD prevention targeting them? Do adverse criminal laws prevent or make access to health facilities more difficult for LGBTI persons? Are some health services denied to LGBTI persons, e.g. reproductive health care for lesbians, blood donations for gay and bisexual men?	LGBTI groups; professional medical associations; ministry of health.
9.2 Is gender reassignment treatment accessible?	Are psychological, endocrinological and surgical gender reassignment services available in the country or is treatment abroad provided for? Are these services available free from discriminatory and degrading treatment, independent of marital, legal or any other non-medical status and based on the informed consent of the person concerned? Do insurance and health care schemes limit or deny coverage of costs for these kinds of treatment on discriminatory basis? Is information about these services broadly available?	Ministry of health; professional associations of doctors and psychiatrists; patient organisations; LGBTI groups.

10. Rights of children		
10.1 Do children suffer from discrimination as a result of sexual orientation or gender identity?	Are children discriminated against because of their own sexual orientation or gender identity? Does the sexual orientation or gender identity of an LGBTI parent have a negative impact on the status of his or her children? Are procedures in place to enable minor transgender persons to express their gender identity and live accordingly? Are children subjected to medically unnecessary surgery, performed without their informed consent, or that of their parents, in an attempt to 'fix' their sex?	Anti-discrimination legislation; laws on the rights of children; laws on guardianship, inheritance; legal associations; children's rights and LGBTI NGOs.
11. Right to Education		
11.1 Do LGBTI persons suffer discrimination in the right to education on the grounds of sexual orientation or gender identity?	Do LGBTI persons enjoy their right to education in a safe environment, free from bullying, violence social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity?	LGBTI groups; school boards; testimonies, website reports, ministry of education.

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